

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

OKTIBBEHA COUNTY BOARD OF SUPERVISORS

PLAINTIFF

vs.

No. 1:00CV131-D-D

FARM SERVICES, INC.

DEFENDANT

OPINION

Presently before the court is the Plaintiff's motion to remand this cause to the Chancery Court of Oktibbeha County. Upon due consideration, the court finds that the motion should be granted and this cause remanded to state court for ultimate resolution.

*A. Factual Background*

In 1966, in order to encourage local economic development, the Plaintiff leased ten acres of land to the Defendant for ninety years at nominal cost. At the same time, the Plaintiff and Defendant entered into a contract whereby the Plaintiff loaned \$250,000 to the Defendant to be used, *inter alia*, to construct a building on the property and in developing the Defendant's business. In return, the Defendant agreed to convey the building, and all other improvements on the land, to the Plaintiff, and to operate an agricultural facility employing local residents. The Defendant further agreed, in the contract, that if it ceased business for more than a year or failed to employ local residents, the lease would be terminable by the Plaintiff.

In 1999, the Plaintiff learned that the Defendant had been out of business for more than one year and was not employing any local residents. On March 21, 2000, the Plaintiff filed the current action in the Chancery Court of Oktibbeha County. In this action, the Plaintiff seeks specific performance of the contract – to have the Defendant convey the building and other improvements to the Plaintiff; further, the Plaintiff seeks a court declaration that it lawfully terminated the Defendant's lease due to the Defendant's failure to be in operation for more than one year. The Plaintiff also seeks immediate possession of the premises and a declaration as to whether it is entitled to taxes on the improvements as well as damages for intentional waste because some of the improvements have been torn down.

On April 11, 2000, the Defendant removed the case to this court asserting that federal jurisdiction exists because it plans to raise federal defenses or counterclaims to the Plaintiff's state law claims. The Plaintiff has now motioned the court to remand the case to state court.

### *B. Standard for Remand*

The Judiciary Act of 1789 provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). Original federal jurisdiction exists in “[a]ll civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

For the reasons set forth below, the court finds that the Plaintiff's claims do not “arise under” federal law; as such, this court is without jurisdiction to adjudicate this action and remand to state court is proper.

### *C. Discussion*

The Defendant argues that this case is removable based upon its planned defense or counterclaim that the Plaintiff's lawsuit constitutes an attempted taking in violation of the Takings Clause of the United States Constitution. The Defendant also purportedly plans to assert that the Plaintiff's suit violates the Due Process and Equal Protection Clauses of the United States Constitution.

It is axiomatic that whether a claim arises under federal law for removal purposes is determined solely by reference to the Plaintiff's complaint. See Rivet v. Regions Bank of Louisiana, 522 U.S. 470, 475, 118 S.Ct. 921, 925, 139 L. Ed. 2d 912 (1998) (“[F]ederal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint.”). Likewise, it is not enough for removal purposes that a federal question may arise during the course of the litigation in connection with some defense or counterclaim. See Metro Ford Truck Sales, Inc. v. Ford Motor Co., 145 F.3d 320, 326-327 (5<sup>th</sup> Cir. 1998) (in order for case to be removable, a “federal question must be presented by plaintiff's complaint . . . [i]t is insufficient that a federal

question has been raised as a matter of defense or as a counterclaim.”).

In this case, the Plaintiff’s complaint indisputably raises only state law claims for, *inter alia*, breach of contract. The Defendant’s sole basis for removal is premised upon the fact that it plans to raise federal defenses to the Plaintiff’s state claims. As explained above, federal defenses are insufficient to invoke federal jurisdiction when the Plaintiff’s well pleaded complaint seeks relief solely under state law. As such, the Plaintiff’s claims do not arise under federal law, and this court is without jurisdiction to adjudicate this matter. Therefore, this cause shall be remanded to the Chancery Court of Oktibbeha County for ultimate resolution.

A separate order in accordance with this opinion shall issue this day.

This the \_\_\_\_ day of June 2000.

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United States District Judge

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DEFENDANT

ORDER

Pursuant to an opinion issued this day, it is hereby ORDERED that

- (1) the Plaintiff's motion to remand (docket entry 6) is GRANTED; and
- (2) this cause is hereby REMANDED to the Chancery Court of Oktibbeha County, Mississippi.

SO ORDERED, this the \_\_\_\_ day of June 2000.

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United States District Judge